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Report : Mr. Walker

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IN SENATE OF THE UNITED STATES.

FEBRUARY 14, 1853.—Ordered to be printed.

Mr. WALKER made the following

REPORT.

The Committee on Indian Affairs, to whom it was referred to inquire into and report to the Senate, "what sum, if any, is equitably and justly due from the United States to the Menomonee tribe of Indians; and on what terms and conditions, and in what manner, such sum should be paid to said Indians," have had the inquiry under consideration, and now ask leave to report:

That, by the terms of the treaty of 18th October, 1848, the Menomonees cede all their lands in the State of Wisconsin, for the sum of \$350,000, in addition to the country set apart for them west of the Mississippi. Now, if the quantity of land owned by these Indians was not materially under-estimated by the government, and if they were paid without unreasonable deduction, at the rate and to the amount to which they were reasonably entitled for what they did cede, then it is clear that they have no cause of complaint or of claim. To hold the contrary would be to subject the government to the inconvenience of readjusting its treaty arrangements and accounts with most if not all the Indian tribes with which it has ever made treaties of cession and acquisition.

The committee has, therefore, most seriously and laboriously turned its attention to the inquiry: first, did the authorities of the government materially under-estimate the quantity of land owned by the Menomonees in Wisconsin, when fixing the basis of the treaty of 1848? and, second, did they, in settling the price to be paid, make unreasonable deduction from the rate or the amount to which these Indians were entitled for what they did in fact cede to the government?

By the instructions of the Secretary of War to the commissioner who negotiated the treaty of 1848, the quantity of land estimated to the Menomonees, and which was to form said basis, was but 3,023,800 acres. The committee cannot hesitate to pronounce this estimate too low; and not only too low, but so much so as to startle at once the sense of justice of any one who will inform himself of the facts. Indeed, so manifest has been the error of the estimate, that from the hour the commissioner arrived on the treaty ground, he seems to have become aware of it to a great extent, for he says in his report to the Secretary of War, of 12th December, 1848, that he "*ascertained, while in the country, that there was an error in the map, which was before the Attor-*

ney General, in relation to the location of a small lake that determined the course of one of the boundary lines, and which, if so corrected as to conform with the representations there made, would probably increase the number of acres which I was authorized to recognise as belonging to the Indians, to about 4,000,000."

As if desiring to impress the government with a knowledge of the fact that it had overreached these defenceless beings to the extent of at least about one million of acres, the Commissioner holds this language in his annual report for the years 1848 and 1849, when speaking of the conclusion of the treaty of 1848:

"This important object, which unfavorable circumstances and influences have heretofore prevented being effected, has at length been attained, a treaty having recently been negotiated with them, by myself, in their country, under instructions of the 14th of September last, by which they cede all their lands in Wisconsin, containing about four millions of acres," &c.

At the time the treaty was signed, the chiefs of the tribe claimed that they justly owned nearly eight million acres of land in Wisconsin. They have ever since claimed, and still claim, the same thing; and that the government has dealt hardly by and has stripped them of this vast extent of country, under an ostensible purchase of only 3,023,800 acres. These complaints and clamors have directed the attention of the proper functionaries of government to the subject, with a view to ascertaining whether or not they were founded in truth and justice. Investigation has shown to the satisfaction of the President, the Secretary of the Interior, and the Commissioner of Indian Affairs, and of the General Land Office, that if the Indians claim too much, the government has also taken from them vastly too much, and has paid them for too little. In a letter of the present Commissioner of the General Land Office, which has been laid before the committee, the Commissioner estimates the area of the cession at 5,000,000 acres. This estimate is referred to with approbation by the Commissioner of Indian Affairs in his report to the Secretary of the Interior, of the 23d of April, 1851. This last report has been approved by the Secretary of the Interior and the President, as evinced by the two letters of the Secretary of the Interior accompanying this report, dated respectively the 12th and 16th of July, 1852. Upon a map accompanying the annual report of the Commissioner of the General Land Office, for the last two years, a district of country is laid down as the "*Menomonee cession of October 18, 1848,*" which embraces, upon actual survey, 231 townships, or 5,322,240 acres. Within this tract is embraced about 92,000 acres of the cession of 1836, on the east side of the Wisconsin river, which being deducted from the above aggregate, leaves 5,230,240 acres as the acknowledged amount of the cession of 1848. The committee submit a copy of this map with their present report, having colored the district or tract just mentioned with red.

But it may be asked, by what authority is the Menomonee cession extended north of the southern line of the Chippewas, as established by the treaties of the 19th of August, 1825, and the 11th of August, 1827? The answer is a plain one. By those treaties the most southerly point of the southern line of the Chippewas was fixed at the

Plover Portage of the Wisconsin river. By two treaties made with the Menomonees since the treaties of 1825 and 1827, the government has conceded that it *did not* consider the Menomonees bounded on the north by the southern line of the Chippewas. By one of these treaties (8th of February, 1831) the Menomonees are permitted to carry their northern boundary as far north as the head of the Menomonee river of Green bay, as shown on the map above alluded to; and by the other, (3d of September, 1836,) the government actually made a purchase from the Menomonees of 184,000 acres of land lying three miles on each side of the Wisconsin river, and extending north from the Plover Portage, or southern extreme of the Chippewa line, a distance of nearly forty miles.

From this it is manifest that the government has never restricted the Menomonees on the north, to the southern line of the Chippewas; nor have the Menomonees ever deemed themselves so restricted. They had the best of reasons for supposing the contrary. Not only had the government allowed them to bound their country far north of that line, but it had fully recognised their title by making a purchase and accepting a cession from them north of it.

It will be perceived, by reference to the map herewith submitted, that the Menomonee cession, indicated in red, lies entirely east of the Wisconsin river. But in point of fact, did not the Menomonees, at the date of the treaty of 1848, also own the country west of that river to Black river, and north of the Manoy or Lemonweir river, as indicated by the tract colored on the map with green? The committee is of that opinion, and for the following reasons:

By the 8th article of the treaty of the 19th August, 1825, the Menomonees claim Black river as their western boundary. This claim was made in the presence of the government commissioners, and the delegates of the Sioux, Chippewas, Sacs and Foxes, Iowas, Winnebagoes, Ottowas, and Pottawatomies, and was disputed by neither. In the treaty of the 8th February, 1831, they extend their boundary even farther west—making the Chippewa river their western boundary; and for a southern line, west of the Wisconsin, they take a line from the mouth of the Chippewa, across Black river, to the forks of the Manoy (now called the Lemonweir) river, and down that river to the Wisconsin. But limiting them to Black river on the west, and by the southern line and the Manoy, as described in the treaty of 1831, we find them to have been entitled to this additional tract of land, between the Wisconsin and Black rivers, amounting to 108 townships, or 2,488,320 acres; which added to 5,230,240 acres east of the Wisconsin—and which is now conceded to have belonged to the Menomonees—and the amount of the cession of 1848 would appear to have been 7,718,560 acres. The committee has searched in vain to find any act of the Menomonees by which they have ever divested themselves, or been divested, of this Wisconsin and Black river tract. On the contrary of such a fact, the committee finds that the government expressly recognised their title west of the Wisconsin, by the purchase from them in 1836 of about 92,000 acres of land west of that river. The Menomonees have never ceased to claim this tract of country; and both before and at the time of making the treaty of 1848, Oshkosh, the head chief of the Menom-

onees, and both a good and sensible man, claimed that his tribe owned nearly 8,000,000 acres in Wisconsin. It was in view of this continued claim that the Attorney General, to whom this matter was referred before the treaty of 1848, used the following language in his opinion given on the occasion of that reference:

"They (the Menomonees) may cross the Wisconsin river into the territory claimed by the Winnebagoes, and show a title better than theirs, if they have one."

To show this better title, what more could an Indian say than this: "In 1825 we claimed to Black river, in the presence of our white brother and the Winnebago, and neither disputed our claim; we have occupied and hunted over the country ever since, until 1836, when our Great Father, wanting a part of this country, applied to us to buy, and not to the Winnebago; and we, and not the Winnebago, sold to our Great Father. From 1836 to the present hour we have continued to occupy what we did not then sell. Our camps were there and our families were there, when our warriors went forth to assist you in your battles against the Winnebago; yet you will say our title is no better than the Winnebago's, when he only came upon our country by sufferance or usurpation, and, by his craft and intrigue, induced you to buy from him what belonged not to him but to us."

All this might be said by the Menomonee, and at the same time truly said. The committee, therefore, cannot gainsay the title of the Menomonees to this tract. Whatever of usurped title the government may have seemed to recognise in the Winnebagoes, the committee are forced to the conviction that the Menomonees had a "better title than theirs" to this tract of country.

The real amount of land ceded by the treaty of 1848 would appear, then, to have been, as before stated, 7,718,560 acres, while the maximum estimated and fixed as the basis of the treaty was but 3,023,800 acres. The difference is 4,689,760 acres; and this difference the government has acquired without price, and the Indians have lost without consideration, and are now without the power to redress the wrong; for, by the terms of the treaty, they *cede all their lands in Wisconsin, wherever situated.*

The committee cannot, however, come to any other conclusion than that the government did materially and unreasonably under-estimate the lands of the Menomonees, in fixing the maximum at 3,023,800 acres, and that humanity and justice alike forbid that the country should avail itself of the enormous difference; but, on the contrary, that these, as well as sound policy, would dictate the propriety of readjusting the financial relations of the government with this ever friendly, yet now poor, helpless, and defenceless people.

What is shown to have been the loss of these Indians in land, is not the only loss they sustained by the treaty of 1848, or rather by the manner in which its terms were settled by the commissioner who negotiated it. This brings the committee to the second branch of the inquiry: Did the government, in settling the price to be paid, make ~~unreasonable~~ deduction from the rate or amount to which the tribe was ~~reasonably~~ entitled for what it did in fact cede?

By the instructions to the negotiator of the treaty, he was author-

ized to pay for a cession of the Menomonee lands, at a rate "*per acre not exceeding that paid by the United States under the treaty with the Menomonees of September 3, 1836.*"

Now, the rate per acre paid by the United States under the treaty of 1836, was $18\frac{3}{10}$ cents. If the negotiator had allowed at this rate for even the under-estimated maximum of 3,023,800 acres, to which he was restricted by his instructions, it would have amounted to \$571,498 20; whereas, he allowed but \$350,000 for the limited maximum, which would be at the rate of but eleven cents and a fraction per acre. Here, then, the Indians were subjected to a deduction and loss, in the authorized price, of \$221,498 20, supposing them to have owned but the amount of land fixed as the maximum.

But suppose the quantity of land to have been what the negotiator says he discovered it was while in the country—4,000,000 acres; this, at the rate of the treaty of 1836, or $18\frac{3}{10}$ cents per acre, would amount to \$756,000. The amount received for this increased quantity was, likewise, but \$350,000; showing, under this state of the case, a loss to the Indians of \$406,000.

And again suppose the quantity of land actually ceded to be what it is estimated to be at the General Land Office—5,000,000 acres; this, at the authorized rate of the treaty of 1836, would amount to \$945,000. But for this still increased quantity the Indians were paid but \$350,000, sustaining, upon this basis, a loss of \$595,000. Yet we have seen that an actual survey has demonstrated the fact that the actual quantity of land embraced in the tract east of the Wisconsin river—confessedly the Menomonee cession of 1848—is 5,230,240 acres. This quantity, at the authorized rate of $18\frac{3}{10}$ cents per acre, would have given the Indians \$988,515 36. And yet they received for all this but the sum so often mentioned, or \$638,515 36 less than they were entitled to, for their land east of the Wisconsin alone.

But concede the Menomonee title to the country between the Wisconsin and Black rivers, and the case stands thus: East of the Wisconsin, 5,230,240 acres; west of the Wisconsin, 2,488,320 acres; making an aggregate of 7,718,560 acres. This quantity at $18\frac{3}{10}$ cents per acre, would entitle the Indians to the sum of \$1,458,807 84. Deduct from this sum the amount paid, and the balance in favor of the tribe would be \$1,108,807 84.

The committee is aware that this statement of the case seems incredible; yet, as regards the quantity of land, they would remind the Senate that it is no more than the Indians have always claimed; and as regards the price, it is but what they received for their lands under the treaty of 1836, and what the commissioner was authorized by his instructions to stipulate for, by the treaty of 1848. What makes the statement above seem incredible is, the enormity of the difference between the estimated and *actual* quantity of land ceded; and between the price *authorized* to be paid, and *that which was actually paid*: Were the treaty *now* to be made, it cannot be presumed that the maximum of land would be estimated at a quantity less than 5,230,240 acres; for this is now known to be contained in the single tract east of the Wisconsin; and surely $18\frac{3}{10}$ cents per acre would not be deemed an extravagant price for land of the most fertile and beautiful character;

when it is remembered that within a year the Senate has ratified a treaty stipulating to pay about 60 cents per acre for land upon the St. Peter's river, in Minnesota.

While it is thus clear that the maximum would not be estimated at less than the quantity known to be contained in the tract east of the Wisconsin, is it any less clear that the maximum would be estimated to include the tract west of the Wisconsin? If so, it could only be in consequence of some supposed superior title in the Winnebagoes. Title in the Winnebagoes must be found, if found at all, in the 7th article of the treaty of 19th August, 1825. But it must be borne in mind that this article claims also all east, to and including Winnebago lake, and concludes with these words: "But, for the causes stated in the next article, *this line from Black river must, for the present, be left indeterminate.*"

In the next or 8th article of the same treaty, the Menomonees dispute the Winnebago title, and claim, as before stated, west to Black river. In 1831 they reassert their title, and that, too, with the approbation of the government; while the Winnebagoes never again allude to their claim to the country in question, notwithstanding they cede land elsewhere to the government, by treaties of 1829 and 1832. In 1837, however, without designating any particular locality, they enter into this sweeping and comprehensive stipulation with the government: "ARTICLE 1.—*The Winnebago nation of Indians cede to the United States all their land east of the Mississippi river.*"

Here, then, we have the whole of the Winnebago title or claim, so far as it conflicts with that of the Menomonees; while the Menomonee claim starts with the year 1825, is reasserted in 1831, and again in 1836, when they sell a part to the government; and from the beginning down to the treaty of 1848, they are in possession and occupancy of the country.

The conclusion would therefore seem irresistible, that the Menomonee title to the country between the Wisconsin and Black rivers was as complete as to any other part of their acknowledged cession. If so, with the knowledge at present possessed upon the subject, an estimate of the Menomonee lands would necessarily include the country in question.

How, then, stands the case? The government has obtained a cession of 7,718,560 acres of land, worth at least as many dollars, after paying all expenses, for which she has paid but \$350,000. Here is a clear gain of \$7,368,560. The committee is not aware of any like speculation by the government in its negotiations with mankind, either savage or civilized. And upon whom is this speculation made? Upon a nation of reputed savages—once wealthy and powerful, indeed, but now poor and helpless in the extreme, but whose glory it is to boast that they have never yet shed the blood or taken the scalp of a white man: upon a nation of friends—early and long tried, but still friends—who from 1812 to the late Indian war of the Northwest, have always been found the firm and steadfast allies of our country. But such has been their treatment on return. Still, however, they faithfully maintain their plighted amity, and await, with hope, the justice of the government.

But as the Menomonees did in fact contract, at the rate of eleven cents and a fraction per acre, for their land, it may be asked on what

ground the committee bases the right of the Indians to a higher rate? The committee readily concedes, that if the Indians so agreed, with a full knowledge of all the facts and circumstances surrounding the transaction, there would be no foundation for a claim to a higher rate. But did they possess this knowledge? Were they informed that the President had authorized the negotiator to pay as high as $18\frac{9}{16}$ cents per acre? If not—and it nowhere appears that they were—there was an omission to inform them of what was most vitally essential to their rights; for it was to the rate prescribed by the President, and not to that which might be bargained for by the negotiator, that the Indians had a right to look for the rule of compensation for their lands—and this, too, by express treaty stipulation. By the treaty of the 8th of February, 1831, it was stipulated between these same Indians and the government as follows:

“That part of it (their country) adjoining the farming country, on the west side of Fox river, (which is the country ceded by the treaty of 1848,) will remain to them, as heretofore, for a hunting-ground, *until the President of the United States shall deem it expedient to extinguish their title.* In that case, the Menomonee tribe promise to surrender it immediately upon being notified of the desire of government to possess it; *the additional annuity then to be paid to the Menomonee tribe to be fixed by the President of the United States.*”

In this clause the term “annuity” is clearly used in the sense of compensation; for an “annuity” is a continuous thing, and could not be said “*then to be paid.*” In this sense, then, it became the duty of the President from that hour, whenever the title of the Menomonees to the country named should be extinguished, to fix “the additional compensation then to be paid to the Menomonee tribe.” By his instructions to the negotiator of the treaty of 1848, the President declares that he “is disposed to treat the Indians *with kindness and liberality,*” and then proceeds to limit, if he does not fix, the compensation for their land *at a rate not exceeding that of the treaty of September 3, 1836, or $18\frac{9}{16}$ cents per acre.* But of all this, for aught that appears to the committee, the Indians were kept in entire and profound ignorance. Was this treating them “with kindness and liberality?” Had they not a right to inquire and to know, since they were now “notified of the desire of government to possess their country,” and that the time had come when they must fulfil their “promise to surrender it immediately,” what rate of compensation the President had named? And when this was made known to them, were they not entitled to this rate? Or did “kindness and liberality” require that they should be made to submit to such terms as might be substituted, in lieu, by keen and subtle diplomacy? Whatever view others may take of these questions, the committee can come to no other conclusion than that the Indians were entitled to the highest rate of compensation fixed by the President; and that subjecting them to a less rate was an infraction of the spirit, if not the letter, of the treaty of the 8th February, 1831. This is the ground on which the committee base the right of the Menomonees to a higher price for their lands than that for which they were induced, under the circumstances, to contract.

Still it may be said that the President did not, in point of fact, fix,

but only limited the compensation, or rate of compensation. The plain answer is, that it was his *duty*, under the treaty of 1831, to fix it; and for the government now to take advantage of the fact that he did not, is nothing more nor less than to take advantage of its own wrong, and thereby leaving the Indians subject to all the disadvantages resulting from that wrong, the superior tact of the government, and their own ignorance in matters of negotiation.

In what the committee has said, it is no part of its design to censure the negotiator of the treaty of 1848. In the opinion of the committee, no justification can be found for saying more than this: that he misconstrued his instructions, and stood too firmly and rigidly by the pecuniary interests of his country—an offence, if it be one, with which too few can be charged at this day. Had he been negotiating with an enlightened and independent nation, the consummation of such a treaty would have constituted one of the finest, as it certainly was one of the most successful, strokes of diplomacy.

The committee will conclude this branch of their subject by stating the account as they understand it.

The United States,

To the Menomonee tribe of Indians,

Dr.

To 7,718,560 acres of land, ceded by treaty of 18th October, 1848, at $18\frac{3}{4}$ cents per acre, amounting to.....	\$1,458,807 84
Deduct amount paid under same treaty....	\$350,000
Deduct appropriation for removal to their present location.....	25,000
	<hr/> 375,000 00

Amount due from the United States to said

Indians 1,083,807 84

This is the true state of the accounts between the government and the Menomonees, in the opinion of the committee; but as it may be possible that theirs is an over-estimate, they deem it safer and more prudent to state the account upon the basis of the quantity of land ascertained by survey to be contained in the tract east of the Wisconsin, thus:

The United States,

To the Menomonee tribe of Indians,

Dr.

To 5,230,240 acres of land, ceded by treaty of 18th October, 1848, at $18\frac{3}{4}$ cents per acre.....	\$988,515 36
Deduct amount paid under same treaty.....	\$350,000
Deduct appropriation for removal to their pres- ent location.....	25,000
	<hr/> 375,000 00

Amount justly and equitably due from the

United States to said Indians..... 613,515 36

This sum is the very least, in the opinion of the committee, which

will discharge the claims of justice upon the government, in favor of the Menomonee Indians.

In compliance with the instructions of the Senate, it only remains that the committee report "on what terms and conditions, and in what manner, such sum should be paid to said Indians."

The committee is fully impressed with the difficulty of this branch of the subject, and has reflected upon and considered it with a sincere desire to adjust it in such a manner as to accomplish the most lasting and permanent good to the Indians, and at the same time to do no injustice to the government, or individuals. The committee has, consequently, concluded to recommend that, in making the appropriation, it be provided that the sum appropriated shall remain in the treasury, subject, first, to the payment of such debts or demands upon them as they may expressly assent to in council, in presence of the local agent, after the passage of the act making the appropriation, and the full and fair notification of the fact to the Indians; and, second, to be invested for or paid to the Indians in such manner and at such times as may be agreed upon by and between the President and the chiefs of the tribe.

The committee, therefore, has directed that the following amendment be offered to the Indian appropriation bill and which it is earnestly recommended may be passed:

And be it further enacted, That there be, and hereby is, appropriated out of any unappropriated money in the treasury, for the benefit of the Menomonee tribe of Indians, the sum of six hundred and thirteen thousand five hundred and fifteen dollars; the said sum being the consideration in full, at the rate of eighteen and nine-tenth cents per acre, for five million two hundred and thirty thousand two hundred and forty acres of land in Wisconsin, ceded by said Indians under treaty of October 18, 1848, after deducting the sum of three hundred and fifty thousand dollars allowed by said treaty, and twenty-five thousand since appropriated to said Indians. The said sum, however, to remain in the custody of the Secretary of the Treasury for the time being, subject to the disposition following—that is to say:

First, so much thereof as may be necessary to the payment of such debts and demands of and upon such Indians as they shall, in the presence of the proper local agent or superintendent, expressly admit and sanction as just and due, in a council to be called for that purpose, after the passage of this act, and the notification thereof to them, and of the amount hereby appropriated for their benefit: a true and correct list of which debts and demands, with a statement of the general character of each, properly certified by such agent or superintendent, shall be forwarded to the President of the United States, who shall order the same to be paid out of this appropriation, if he shall be satisfied that the same were freely and voluntarily admitted and sanctioned as aforesaid; and second, the balance to be invested for, or paid to said Indians, in such manner and sums, and at such times, as may be agreed upon and stipulated for, by and between the President of the United States and the chiefs of the said tribe.